1952. **File No.** Irrig II/52 (N)

Legal Deptt.

B **BRANCH** P.9(e) 1952

Subject:— Notifications under the Bombay Irrigation Act 1879

File No. Irrig II/52 (N)

Gen. 194 e.

146-B

Legal Department.

A revised draft notification is sent herewith.

2 A notification under section 5 can only be issued when water is to be supplied or used by the State Government for the purpose of any existing or projected canal. The revised draft notification provides accordingly. P.W.D. should verify whether it carries out its intention.

Id./.... .. 15/2

Additional Secretary to Government.

U.R. P.W.D. No. 2485, dated the 15th February 1952.

SMR 3-7-56
4 Copies.

LEGAL DEPARTMENT.

A revised draft notification is sent herewith.

Id./.... 16/5

Additional Deputy Secretary to Govt.

U.R. to P.W.D.No. 8252, dated the 17th May 1952.

SMR 3-7-56
4 Copies.

LEGAL DEPARTMENT.

The Agricultural and Forests Depart-ment draft notification at page 299/C is in order.

2 It ~~may~~ is not, however, necessary to cancel by separate notification as at page 295/C, Government Notification, Agricultural and Forests Department No. 1033-F dated the 20th January 1951 since a fresh notification is being issued under section 4(b) of the Bombay Irrigation Act investing the District Agricultural Officers with all the powers and duties of Canal Officers under certain sections of the Act. It will suffice if the notification No. 1033-F dated the 20th January 1951 is superseded.

3 A revised draft of notification under section 4(b) of the Act is sent herewith in place of the Agricultural and Forests Department draft at page 303 subject to the following observations:-

(1) The sections specified in the Agricultural & Forests Department draft at page 303 are not consistent with the provisions of section 75(1) of the Act. Under that sub-section the sections which are to be applied to a second class irrigation work have been specified. Only those sections will, therefore, be in operation as regards second class irrigation works, and power under those sections only can be delegated to a District Agricultural Officer.

(2) The reference to the river Ghataprabha in respect of which powers are to be exercised by the District Agricultural Officer is not in

order as no part of that river has been proposed tobe declared as a second class irrigation work (lease see the draft at page 299/C). Item 15 in Agricultural and Forests Department draft has, therefore, been deleted from the revised notification.

Id./..... 18/6

Additional Deputy Secretary to Government.

U.R. to A.& F.D.No. 578-Confl. dated the 19th June 1952.

SMR 3-7-56
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Legal Department.

The draft notification at page 305 c/s supplied with this Department U.R.No. 678-Confl. dated the 19th June 1952 does not make any reference to section 58 of the Bombay Irrigation Act, 1879, as stated by the Agriculture and Forests Department in paragraph 3 of its note on page 7 ante. But presumably A. & F. D. refers to section 57 of the said Act and not to section 58 thereof. The A.& F.D.'s statement "that powers under section 57 cannot be delegated to the District Agricultural Officers" appears to ignore the amendments made by Bombay Act No. LIX of 1950. The words and figures "sections 49 to 65F(both inclusive), section 57" were inserted after the word and figures "Part V" in sub-section (1) of section 75 by the said Bombay Act No. LIX of 1950 and as such powers under section 57 can now be validly delegated to any officer appointed under section 4 in respect of a Second Class Irrigation Work. No change in the draft notification as supplied by this Department is, therefore, necessary in this behalf.

2 The P-W.D. in its note at page9 ante has stated that under Government Notification No. 4411/36, dated the 17th July, 1948(p. 311/c) the river Ghatprabha including streams joining it has been already notified under section 5 of the Bombay Irrigation Act. Under ~~xx~~ Clause

(d) of section 3 of the Act the part of the Ghatprabha river referred to in the said notificatio then becomes a canal and therefore, all the provisions of the Bombay Irrigation Act except Part X appl to such a canal. Section 72 of the Act which appears in Part [redacted] thereof, inspecific terms provides that that Part shall apply only to second Class Irrigation Works and under section 75 only certain sections specifi ed therein apply to a Second Class Irrig tion Work. There does not appear to be any objection to declare the part of the river which has been notified under section 5 and has therefore been a canal within the meaning of section 3(d) to be a Second Class Irrigation Work under section 73. If, however, the said port- is now declared a Second Class Irrigati- on Work only those provisions of the Act as are specified under section 75 would apply to the said portion and not all th provisions of the Act(except Part X) which are at present applicable to it. In view of this position o the A.& F.D. may consider whether the portion of Ghatprabha river referred to should be continued to be a canal under section 5 or the said portion should be declared to be a Second Class Irrigation Work under section 73.

Id./ 5/9

Additional Deputy Secretary to Govt.

U.R. to A.& F.D.No. 14520, dated the 6th September 1952.

SMR 4-7-56
4 Copies.

Legal Department.

The view taken by the Secretary to Government, Public Works Department, in his note dated the 8th November 1952, at page 22 ante is correct.

2 The question whether the whole or any part of the Ghatprabha river referred to in Government Notification, Public Works Department No. 4411/36, dated the 17th July 1948,(Copy at p. 309/C) should continue to be a canal under section 5 or be declared a Second Class Irrigation Work was for the Department to decide. As it has been decided that the whole of the river should continue tobe a canal, it is not now necessary to issue any notification under section 73 of the Bombay Irrigation Act, 1879.

3 Undersection 4(b), any Government Officer can be invested to exercise the powers and duties of a Canal Officer in respect of a Canal under section 5 or in respect of a Second Class Irrigation Work under section 73. There is no legal objection to investing the District Agricultural Officer, Bijapur, with the powers of a Canal Officer as proposed by the Public Works Department.

Id./..... 26/11

Additional Deputy Secretary to Govt.

U.R. to P.W.D.No. 1308/B-Confl. dated th 26th Novr, 1952.

SMR 4-7-56, 4 Copies.

Legal Department.

Seen and returned.

2 The condition precedent to the application of section 5 of the Bombay Irrigation Act, 1879, is that Government should be satisfied that the water of any river or stream flowing in a natural channel or of any natural collection of still water should be ~~xx~~ applied or used for the purpose of any existing or projected canal.

3 Similarly, the conditions precedent to the application of sectdon 73, is that there must be a proposal to constitute any stream etc., which is actually used or required for the purposes of irrigation, a second class Irrigation work.

4 The requirements of these sections should also be specifically brought to the notice of the officers concerned so that unnecessary portion of any stream or collection of water may not be included in the notifications.

Id./..... 6/1

Additional Deputy Secretary to Government

U.R. to P.W.D.No. 333/B, dated the 7th January 1953.

SMR 4-7-56
4 Copies.